MAY 1 1957
JOHN T. FEY, Clerk

SUPREME COURT OF THE UNITED STATES

No. 956

CARL C. CURTIS,

Appellant,

versus

THOMAS J. KELLY, as Sheriff of Dade County, Florida,

Appellee.

APPEAL FROM THE SUPREME COURT OF FLORIDA

JURISDICTIONAL STATEMENT

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SUPREME COURT OF THE UNITED STATES

No. ———

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THOMAS J. KELLY, as Sheriff of Dade County, Florida,

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JURISDICTIONAL STATEMENT

STATEMENT AS TO JURISDICTION

Appellant, CARL C. CURTIS, submits herewith his statement, particularly disclosing the basis upon which this Court has jurisdiction on appeal to review the Judgment of the Supreme Court of Florida, in case No. 27,927, styled as above, affirming a Judgment in Habeas Corpus proceedings of the Circuit Court for Dade County, Florida, remanding the Appellant to the custody of the Appellee-Sheriff.

THE OPINION BELOW

The Opinion of the Florida Supreme Court has not yet been reported. Copy of the Opinion and the Judgment, entered thereon, are attached hereto as Appendix A and Appendix B.

JURISDICTION

1. This is an appeal from a decision of the Supreme Court of Florida affirming an Order of the Circuit Court of Dade County, Florida, in Habeas Corpus proceedings, remanding the Appellant to the custody of Appellee-Sheriff of Dade County, Florida.

2. The Supreme Court of Florida handed down its Opinion on December 12, 1956. Notice of Appeal to this Court was filed by Appellant with the Clerk of the Supreme Court of Florida on the 12th day of March, 1957.

3. The jurisdiction of this Court upon appeal is conferred by **28 U.S.C.A., Section 1257.** Appellant challenged the validity of his incarceration and detainment by the Appellee-Sheriff in a Habeas Corpus proceedings, because the Criminal Information, and the conviction and sentence thereunder which predicated same, did not charge a crime against the **Appellant,** and that his incarceration and restraint of his liberty, based upon the charge, was void and of no effect, and contrary to the Sixth Amendment of the Constitution of the United States, and which ground was specifically set out in the Appellant's Petition for Habeas Corpus.

4. Cases believed to sustain the jurisdiction of this

Court on appeal, include **Herndon v. Lowry, 301 U.S. 242, 247; 81 Law Ed. 1066, 1069, headnote 1.**

QUESTIONS PRESENTED

1. Whether a criminal felony information, which entirely omitted in its charging part, to name Appellant (Carl C. Curtis), is sufficient to predicate a judgment of conviction, and a three year prison sentence, for a crime against nature, and violative of the Sixth Amendment of the United States Constitution, which requires, among other things, that an accused "be informed of the nature and cause of the accusation".

2. Whether a criminal felony information and a judgment of conviction, and incarceration thereunder, is violative of the Sixth Amendment of the Constitution of the United States, as to Appellant (Carl C. Curtis), where the information consists of a charging part and a videlicet, the charging part not charging Appellant with any crime, but charging a crime against a person other than the Appellant; the videlicet part of the Information following "that is to say", containing the Appellant's name, which, under law, neither adds to nor detracts from the charging part.

3. Whether a criminal felony information in the following words:

> "John D. Marsh, County Solicitor for the County of Dade, prosecuting for the State of Florida, in the said County, under oath, information makes that **Jack Young** (Note Curtis' name omitted) of the County of Dade and State of

Florida, on the 23rd day of February, in the year of our Lord, one thousand nine hundred and fifty-five, in the County and State aforesaid, **did then and there unlawfully and feloniously commit the abominable and detestable crime against nature with one Carl C. Curtis; that is to say,** that the said **Jack Young** did then and there put the penis of him the said **Jack Young** into the mouth of him the said Carl C. Curtis; and that the said Carl C. Curtis did then and there wilfully permit the said Jack Young to put his penis into the mouth of him the said Carl C. Curtis, contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida." (emphasis and inclusions supplied)

sufficiently charged a crime against Appellant (Carl C. Curtis) to predicate a judgment of conviction and imprisonment for a crime against nature, under the Sixth Amendment of the United States Constitution, in view of the fact that the Information, in its charging part, does not name the Appellant, but only one **Jack Young**; and the videlicet part following, "that is to say", under law, neither adds to nor detracts from the charging part of the Information.

STATEMENT OF THE CASE

1. On the Information set out in the Questions Presented herein, the Appellant was brought to trial in the Criminal Court of Record, in and for Dade County, Florida, found guilty and sentenced to three years in the Florida State Penitentiary. The Florida Statute, under

which the Information and Judgment are predicated, is **800.01 Florida Statutes Annotated,** which provides:

> "Whoever commits the abominable and detestable crime against nature, either with mankind or with beast, shall be punished by imprisonment in the State prison not exceeding 20 years."

The companion Statute, **800.02 Florida Statutes Annotated,** provides:

> "Whoever commits any unnatural and lascivious act with another person shall be punished by a fine not exceeding $500.00, or by imprisonment not exceeding 6 months."

2. After the affirmance of the Judgment, Conviction and Sentence by the Supreme Court of Florida on appeal, the Appellant was imprisoned by Thomas J. Kelly as Sheriff of Dade County, Florida, the Appellee. While so imprisoned, Appellant filed his Petition for Writ of Habeas Corpus in the Circuit Court of Dade County, Florida, on July 26, 1956, setting up in said Petition that the Information (as set out herein, a copy of which was attached to the Habeas Corpus Petition) was void and of no effect and contrary to the Sixth Amendment of the United States Constitution.

3. The Writ of Habeas Corpus was issued by the Circuit Court Judge on the 27th day of July, 1956, and the Appellee (Respondent in the Circuit Court) made a Return and Answer to the Writ, acknowledging that he held the Appellant in the Dade County Jail because of a Judgment and Sentence predicated on the Information, a copy of which was attached to the Petition.

4. The Circuit Judge, before whom the Petition came on for hearing, despite the fact that he commented on the fact that the **Appellant** (Curtis) was not charged in the Information, as it only appeared that Curtis was a factor for **Jack Young** to commit a crime, nevertheless remanded the Appellant to the custody of the Appellee, however granting leave for an appeal to the Supreme Court of Florida, and denied application for supersedeas bond.

5. On August 21, 1956, Notice of Appeal to the Supreme Court of Florida was filed from the Order, and after the filing of the Appellant's Brief in the Supreme Court of Florida, the Attorney General of Florida, on behalf of the Appellee, filed a Motion to Affirm, or in the alternative, Motion to Quash the Appeal, on the ground that the Appeal was without merit.

6. The Supreme Court of Florida on December 12, 1956, held that the questions raised on appeal were without substantial merit, and affirmed the Judgment of the Circuit Court, remanding the Appellant to the custody of the Appellee. (Tr. 34, 36, 38 and 39)

7. The Information does not comply with the provision of the Sixth Amendment of the Constitution of the United States that an accused "be informed of the nature and cause of the accusation", in that the Appellant is not charged with crime. The charge is only that **Jack Young** committed a crime, but does not charge that **Young** and **Curtis** committed a crime with each other, which would be necessary to predicate a conviction against Curtis, Appellant here.

8. The Information consists of two parts—the charging part, and the videlicet. The charging part states:

> "That **Jack Young** of the County of Dade and State of Florida, on the 23rd day of February, in the year of our Lord one thousand nine hundred and fifty-five, in the County and State aforesaid, **did then and there unlawfully and feloniously** commit the **abominable** and detestable crime **against nature** with one Carl C. Curtis." (emphasis ours)

It is therefore obvious that the charging part did not seek to charge the Appellant with any crime.

The videlicet part of the Information following, "that is to say:" neither adds to nor detracts from the charging part, as the function of a videlicet is to state time, place and manner, which are not of the essence of the matter in issue, and to relieve the state of the duty of proving the allegations strictly as made, and which does not increase or diminish the precedent matter. **Sullivan v. State, 7 So. 275; 67 Miss. 344; State v. Ratcliffe, 165 So. 305; 183 La. 1081.**

It is to be noted that after the charging part, which entirely omits to name, as a defendant, the Appellant, Carl C. Curtis, the videlicet, "that is to say", is set out in the Information, and then follows a description of the act. Where any facts alleging a pleading are preceded by the words, "that is to say", such facts are laid under a videlicet, and so termed. The indictment was fatally defective, and did not charge a crime within the meaning of the Sixth Amendment of the United States Constitution against the Appellant.

CONCLUSION

Appellant respectfully suggests that the Appeal brings before this Court federal questions under the Constitution that are far-reaching and important, both in terms of legal principles and the Constitutional provisions that before one may be convicted of crime, he must be fully charged with the commission thereof, and the nature and cause of the accusation, and that enough has been said to demonstrate that the Questions Presented, including the question that the Constitutional provision has not been complied with, and that a person who was not charged with crime in the charging part of an information, is not sufficiently charged with crime because his name is mentioned and the act detailed in a videlicet. That the Questions Presented are so substantial as to require plenary consideration with briefs on the merits and oral argument, for their resolution.

Respectfully submitted,

ROSENHOUSE & ROSENHOUSE
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Miami, Florida

By _____
D. L. Rosenhouse

By _____
M. H. Rosenhouse
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PROOF OF SERVICE

I, M. H. Rosenhouse, of counsel for the Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the_____day of _____ 1957, I served four copies of the foregoing Jurisdictional Statement, together with the Appendices, by mailing said copies in a duly addressed envelope, with sufficient United States airmail postage prepaid, to Richard W. Ervin, Attorney General, Capitol Building, Tallahassee, Florida, and depositing same in a United States post office or mail box at Miami, Florida.

_____

M. H. Rosenhouse
Of Counsel for Appellant

I hereby acknowledge receipt of four copies of the foregoing Jurisdictional Statement on this the_____ day of_____ 1957.

RICHARD W. ERVIN
Attorney General
State of Florida

By _____
Assistant Attorney General
Attorney for Appellee
Capitol Building
Tallahassee, Florida

APPENDICES

APPENDIX A

IN THE SUPREME COURT OF FLORIDA

JUNE TERM, A. D. 1956

DIVISION A — CASE NO. 27,927

CARL C. CURTIS,

Appellant,

—vs—

THOMAS J. KELLY, as Sheriff of Dade County, Florida,

Appellee.

Opinion filed December 12, 1956.

An Appeal from the Criminal Court of Record for Dade County, Edwin L. Jones, Judge.

Rosenhouse & Rosenhouse, for Appellant.

Richard W. Ervin, Attorney General and Jos. P. Manners, Assistant Attorney General, for Appellee.

PER CURIAM.

This cause came on to be heard on the motion of appellee to affirm the judgment appealed from pursuant to Rule 38 of the rules of this court and it appearing to the court from an examination of the record that said motion is appropriate and seasonably made and that it is manifest that the questions raised on appeal are without substantial merit and need no further argument;

It is accordingly ORDERED, ADJUDGED AND DECREED that the motion to affirm the judgment appealed from be, and the same is, hereby granted, and the judgment is

Affirmed.

DREW, C. J., TERRELL, HOBSON and THORNAL, JJ., CONCUR.

APPENDIX B

IN THE SUPREME COURT OF FLORIDA
JUNE TERM, A. D. 1956
WEDNESDAY, DECEMBER 12, A.D. 1956

CARL C. CURTIS,

Appellant,

—vs—

THOMAS J. KELLY, as Sheriff of
Dade County, Florida,

Appellee.

This cause having heretofore been submitted to the Court upon the transcript of the record of the judgment herein, and briefs and argument of counsel for the respective parties and motion to Affirm (or in the alternative, Motion to Quash) and the record having been inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said judgment; it is, therefore, considered, ordered and adjudged by the Court that the said judgment of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee do have and recover of and from the Appellant his costs by him in this behalf expended, except the $12.00 filing fee which has been paid by the Appellant, all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared was this day ordered to be filed.